

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
February 17, 2011

In the Matter of C. I. MORRIS, Minor.

No. 299470; 299471  
Wayne Circuit Court  
Family Division  
LC No. 08-483987

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Before: WHITBECK, P.J., and O'CONNELL and WILDER, JJ.

PER CURIAM.

Respondents N. Brumley and D. Morris appeal as of right from the trial court's order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), (j), and (m). In addition, an appellate guardian ad litem has filed a brief challenging the termination. We affirm.

This matter arose in December 2008, when the child tested positive for cocaine exposure at birth. Petitioner placed the child in foster care as a newborn. Brumley admitted that she had used cocaine and engaged in prostitution while pregnant with the child. Morris indicated that he was aware of Brumley's substance abuse, but Morris was evasive as to whether Brumley lived with him. Petitioner provided services to both respondents for more than a year after the child's birth, but ultimately sought termination of their rights.

We review the trial court's factual findings for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); MCR 3.977(K). Petitioner had the burden of proving at least one statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). We review for clear error the trial court's decision that petitioner established a statutory ground for termination. *Mason*, 486 Mich at 152.

Respondents individually argue that the trial court clearly erred in relying on § 19b(3)(m) as a statutory basis for termination. We agree that the trial court erred, but the error does not require reversal. Termination is appropriate under § 19b(3)(m) where "[t]he parent's rights to another child were voluntarily terminated following the initiation of proceedings under [MCL

712A.2(b)] or a similar law of another state.”<sup>1</sup> There was no evidence that Morris’s parental rights to any other child were previously terminated. Although there was evidence that Brumley had previously voluntarily released her parental rights to two other children to facilitate their adoption, there was no evidence that the releases followed the initiation of proceedings under MCL 712A.2(b). Accordingly, the trial court erred in finding that § 19b(3)(m) was established by clear and convincing evidence. However, only one statutory ground for termination need be proven, *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005), and the trial court did not clearly err in finding that the remaining statutory grounds for termination were established by clear and convincing evidence with respect to both respondents. The evidence supports the trial court’s determination that grounds for terminating Brumley’s parental rights were clearly established under §§ 19b(3)(c)(i), (g), and (j). Brumley had opportunities to participate in services for more than 15 months, but nonetheless failed to resolve her substance abuse problem. She entered at least three substance abuse rehabilitation programs, but left each program before completion. In addition, there was evidence that she missed numerous drug screens, did not complete therapy, did not attend her scheduled visitations to the full extent, and did not demonstrate that she benefitted from parenting classes.

The evidence also supports the trial court’s determination that grounds for terminating Morris’s parental rights were clearly established under §§ 19b(3)(c)(i), (g), and (j). The evidence showed that although Morris was in compliance with most of the requirements of his treatment plan, he did not substantially benefit from the services. It is not enough merely to go through the motions of completing a treatment plan; the parent must benefit from the services offered in order to become able to provide safe and proper custody of children. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). Morris completed two sets of parenting classes, but failed to demonstrate that he benefitted from them. He was resistant to accepting parenting advice and he failed to interact consistently with the child during visits. He commented at one point to a caseworker that he would not be comfortable alone with the child. Further, he never rectified hazardous conditions in his house, which made the house unsuitable for a child. Moreover, although Morris expressed his intent to raise the child independently from Brumley, he continued to associate with Brumley.

The appellate guardian ad litem’s arguments on appeal focus primarily on the weight of the evidence. As previously discussed, we discern no clear error in the trial court’s factual findings. We further note that in the closing arguments of the final trial on this matter, a different guardian ad litem specifically requested that the trial court terminate both parents’ rights.<sup>2</sup> Given the guardian ad litem’s argument in the trial court, we would not be required to address the contrary argument on appeal. *Living Alternatives for the Developmentally Disabled*,

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<sup>1</sup> Our Legislature amended MCL 712a.19b(3)(m), effective September 4, 2010. See 2010 PA 7. The amendment became effective after the trial court’s decision and does not alter our resolution of this appeal.

<sup>2</sup> The firm name for both the appellate guardian ad litem and the trial guardian ad litem is “Juvenile Law Group.”

*Inc v Dep't of Mental Health*, 207 Mich App 482, 484; 525 NW2d 466 (1994) (“A party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court.”)

The appellate guardian ad litem also argues that the trial court erred by admitting into evidence a report from Morris’s therapist and by allowing a caseworker to testify about the therapist’s statements. Again, this position is contrary to the guardian ad litem’s arguments in favor of termination in the trial court. Moreover, no one raised an objection to the admissibility of the therapist’s report, although Morris’s counsel noted that he would cross-examine the therapist if needed. No one interposed an objection to the caseworker’s testimony about her conversations with the therapist. Absent an objection, the issue of admissibility is not preserved. We review unpreserved claims of evidentiary error for plain error affecting substantial rights. *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003).

We find no plain error in the admission of the report or the testimony.<sup>3</sup> Morris’s counsel cross-examined the caseworker concerning the goals and effectiveness of father’s therapy. Counsel did not challenge the substance of the therapist’s report; rather, counsel elicited testimony that father attempted to comply with the therapist’s suggestions. This cross-examination was sufficient to protect Morris’s substantial rights.

Lastly, the trial court did not clearly err in its evaluation of the child’s best interests. The child was placed in foster care at birth and no parent-child relationship was ever established with either respondent. Brumley made little progress with services and there was no reasonable likelihood of reunification within the foreseeable future. Morris failed to make substantial improvement in his parenting abilities and failed to obtain a home that was suitable for a child. The trial court did not clearly err in finding that termination of respondents’ parental rights was in the child’s best interests. MCL 712A.19b(5); *Trejo*, 462 Mich at 356-357.

Affirmed.

/s/ William C. Whitbeck  
/s/ Peter D. O’Connell  
/s/ Kurtis T. Wilder

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<sup>3</sup> We assume for purposes of this appeal that the rules of evidence applied to the trial under MCR 3.977(F)(1)(b). See *In re Kleyla*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (Docket No. 294776, issued July 15, 2010), slip op p 7.